IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) **C.W.P. No.4778 of 2007**
Date of decision : 30.7.2007

Arcotech Limited

....Petitioner through
Mr.Sanjeev Sharma,
Advocate

Versus

Haryana State Industrial & Infrastructure
Development Corporation Ltd. & others

... Respondent No.1
through Mr.Kamal
Sehgal, Advocate

2) **C.W.P. No.8199 of 2007**
Date of decision : 30.7.2007

Haryana State Industrial Development
Corporation

....Petitioner through
Mr.Kamal Sehgal,
Advocate

Versus

Appellate Authority for Industrial and
Financial Reconstruction & others

... Respondent No.3
through Mr.Kamal
Sehgal, Advocate

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Vijender Jain, Chief Justice (Oral)

The Civil Writ Petition No.4778 of 2007 has been filed by Arcotech Limited, which was previously known as M/s SKS Limited and was declared a sick industrial company under Section 3(1)(0) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") vide order dated 18.4.2001 passed by the Appellate Authority for Industrial and Financial Reconstruction (in short "the AAIFR") and IDBI was appointed as the Operating Agency by the Board to examine the viability of the company and formulate a rehabilitation scheme for its revival.

As no rehabilitation scheme was finalised within the stipulated period, the Board vide order dated 9.12.2003 ordered change of management of the company giving the existing promoters also an opportunity to submit their fully tied up offer. Subsequently, the IDBI vide letter dated 7.5.2004 submitted a draft rehabilitation proposal on the basis of the information obtained from the company, the secured creditors and also the guidelines by the Board. Based thereon a rehabilitation scheme was prepared by the Board taking cut off date as 31.3.2003. The said scheme, according to the order passed by the Board for Industrial and Financial Reconstruction (in short "the BIFR") was circulated to all concerned for consent as required under Section 19(2) read with section 19(1) of SICA.

We have perused paragraph 3 of the order passed by BIFR which has specifically mentioned that the draft rehabilitation scheme was prepared by the Board taking cut-off date as 31.3.2003 and the scheme was circulated to all concerned for consent as

required under Section 19(2) read with Section 19(1) of SICA.

The contention of the learned counsel for petitioner Mr. Sharma is that the draft scheme was approved on 18.11.2004 by BIFR. On 4.1.2005 the petitioner sent an intimation of the scheme, which had been approved by the BIFR, vide Regd.A.D.letter.

Learned counsel for the respondent-HSIDC Mr. Sehgal contended that although the petitioner had informed by registered letter dated 27.1.2005 about the sanctioning of the scheme by the BIFR, however, no opportunity was given by the BIFR to hear the respondent-HSIDC and so aggrieved by the said order passed by the BIFR, the respondent preferred an appeal before the AAIFR on 22.2.2006. The AAIFR also dismissed the appeal of the respondent-HSIDC.

Two submissions have been made by Mr. Sehgal. Relying on the provisions of Section 19(2) of SICA it was contended before us that no scheme could have been formulated or sanctioned by the BIFR without hearing the HSIDC. Secondly, it was contended that AAIFR has not taken into consideration the submission of HSIDC that it was not heard before sanctioning of the scheme.

As a matter of fact, HSIDC has filed a separate writ petition bearing No. 8199 of 2007 challenging the order of the AAIFR.

In support of his contentions learned counsel for the respondent-HSIDC has relied upon **Paam Pharmaceutical (Delhi) Ltd. v. Union of India and others** 2002 Company Cases 897 and **Dewan Bahadur Ramgopal Mills Ltd. v. Appellate Authority for**

Industrial and Financial Reconstruction and others 1999 Company Cases 398, a Single Bench judgment of Andhra Pradesh High Court.

By this order we will also dispose of C.W.P.No.8199 of 2007 filed by the HSIDC.

We have perused the order of the BIFR as reproduced above. BIFR has noted in its order in paragraph 3 that the draft rehabilitation scheme with cut off date as 31.3.2003 was circulated to all concerned.

We have no reason to disbelieve the fact that when the scheme was formulated the notice thereof was not sent to the HSIDC. Except for making a bald averment the counsel for the HSIDC could not show anything from record to substantiate his plea. Hence we have no hesitation to reject it.

It is to be noticed that the appeal filed by the HSIDC against the order of BIFR was dismissed as it was inordinately delayed.

According to the learned counsel for the respondent-HSIDC, the respondent applied for obtaining certified copy of the said order dated 18.11.2004 passed by the BIFR on 20.1.2006. The HSIDC was clearly aware of the proceedings which were pending before the BIFR. The fact was candidly admitted by the counsel for the HSIDC while responding to the factual plea raised by the counsel for the petitioner that the scheme as approved by the BIFR was intimated to the HSIDC vide registered letter. Once the HSIDC had acquired the knowledge of the pendency of the proceedings before the

BIFR and a scheme having been formulated, it could not have adopted the attitude of "rip van winkle" and sleep endlessly over the matter. Therefore, the appeal filed by the HSIDC against the order dated 18.11.2004 was rightly dismissed as being inordinately delayed.

Reliance placed by the learned counsel for the HSIDC on the judgment of Andhra Pradesh High Court in **Dewan Bahadur Ram Gopal Mills Ltd. case** (supra) is of no avail to him as it was observed therein that under Section 25 of the SICA it is obligatory upon the affected party to file an appeal within forty-five days from the date the certified copy of the order of the BIFR and Section 18(3)(a) makes it obligatory on the part of the BIFR to issue such a copy. Extending the logic it was observed that the appeal would be maintainable if it is filed within forty-five days of the issuance of copy, if the copy is received in terms of Section 18(3)(a). But if no copy is given even if he has knowledge he cannot be non-suited on the ground of limitation.

In **Paam Pharmaceutical (Delhi) Ltd. case** (supra) the Apex Court observed as follows :-

> "The scheme of the statute makes it clear that issuance of the order is an act to be undertaken by the BIFR. For the purpose of computation of the period of limitation, the date of service has to be the effective date. Otherwise a person would be rendered remediless if the order is served after forty-five days or sixty days as the case may be from the date of issue.

> "To issue" means "to send out, to send out officially, to send forth, to deliver, to put into circulation, to exit, to go out." The expressions "issued" and "served" are used as interchangeable terms both in dictionaries and various statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, deliver with authority or delivery."

There cannot be any quarrel with the aforesaid proposition. The petitioner in the instant case had clearly stated that the scheme as formulated by the BIFR was communicated to the HSIDC and to the same effect is the order of the BIFR itself noticing in Annexure-A the communication sent to the Managing Director, HSIDC. There is always a presumption attached to the record of a statutory forum which is to be offset by the person who wishes to shake the foundation of such a presumption. As noticed above, the counsel for the HSIDC except for making an averment has not fortified the same by any evidence on record to show that it was not served. The issuance of a copy of the order and the service thereof is a matter of fact. It could be determined only if it had been so brought out by supportive material before this Court, which is manifestly absent.

We are unable to comprehend as to why the HSIDC adopted the approach of an ostrich and waited for more than one year to avail of its legal remedy.

Apparently, the whole idea is an afterthought and this is discernible from the orders passed by the BIFR in which it has been

noticed at Sr.No.13 that Managing Director HSIDC, C-13 & 14 Institutional Area, Sector 6, Opp. General Hospital, Panchkula, Haryana 134108 was one of the persons who was communicated the scheme. We are also constrained to observe that the plea raised by the HSIDC is not bona fide as established from the facts on record. That scheme and the order having been communicated to the respondent-HSIDC on 4.1.2005 itself, there is nothing on record to show that the respondent took the plea that the scheme was passed ex parte, without their participation or without notice thereof to them.

The deliberations of the scheme have been noted under the head 'A' “RELIEFS AND CONCESSIONS”. Sub-Para I under this head pertains to BANKS and FIS. Sub-Para II pertains to GOVERNMENT OF HARYANA & HSIDC. It is relevant to incorporate in order the reliefs and concessions as under :-

“A. RELIEFS AND CONCESSIONS

CUT OFF DATED (COD)-31.3.2003

I. BANKS AND FIS.

To consider payment of 45% of the principal outstanding (along with simple interest @ 8% on the amount outstanding from the second year, payable in the fourth year) within a period of four years and waiver of all the remaining principal, interest and other dues.

II. GOVERNMENT OF HARYANA & HSIDC:

(1)To consider exemption from power cut and provide uninterrupted power supply for running the relocated unit.

(2)To consider exemption from the chargeability of the electricity duty over the rehabilitation period.

(3)To consider exempting the Company/its Directors/Officers from the panel provision of various state acts in respect of default committed upto the cut-up date.

(4)To consider any other relief allowable to the sick unit as per policy package of the state Government for the rehabilitation of the sick unit in the state.

(5)To consider exemption of Sale Tax, Works Contract tax, Octroi/Toll Tax for the rehabilitation period.

(6)HSIDC to consider re-schedulement of payment of Rs.94.50 lakhs, which is proposed to be paid over a period six years from 01.04.2005 and waive of all penalties/interest/damages etc."

From the aforesaid it would be clear that the Govt. of Haryana and HSIDC were directed to consider any other relief allowable to the sick unit as per policy package of the State Government for the rehabilitation of the sick unit in the State and as per clause (6) the HSIDC was to consider re-schedulement of payment of Rs.94.50 lakhs which was proposed to be paid over a period of six years from 1.4.2005 and waive of all penalties/interest/damages etc.

It is in view of this matter that we directed the petitioner, when it approached this Court on 29.3.2007 to deposit a sum of Rs.90 lakhs with the respondent. The said amount has been deposited. The

petitioner has also brought a bank draft bearing No.406531 000024000 dated 25.7.2007 in the sum of Rs.4,50,000/-. The same may also be handed over to the respondent.

Therefore, in view of the facts and circumstances of the case and in view of the specific order passed by the BIFR to consider re-schedulement of payment of Rs.94.50 lakhs, which was proposed to be paid over a period of six years from 1.4.2005, and the payment having been made in one go pursuant to the order passed by this Court, the respondent-HSIDC cannot insist for levy of penalties, interest, extension fee, etc. against the direction passed by the BIFR as contained in clause (6) reproduced above. Respondent-HSIDC cannot act to defeat the object of rehabilitation of company. Even the incorporation of SICA was on account of industrial sickness faced in the country and for those who wanted to rehabilitate the company. The special act was enacted by the Parliament to help rehabilitation by having a package so as to remove the industrial sickness and to generate economic growth in the country.

Consequently C.W.P.No.4778 of 2007 is allowed and C.W.P.No.8199 of 2007 is dismissed.

The conveyance deed be executed immediately in favour of the petitioner by the respondent–HSIDC, preferably within three weeks from today.

(VIJENDER JAIN)
CHIEF JUSTICE

30.7.2007

(MAHESH GROVER)
JUDGE

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